excludes the assessors: under Chapter XXI, Criminal Procedure Code the use of the word Court throughout makes it clear that the assessors do not form part thereof but are rather aiders and helpers of the Court on matters of fact whose opinion the Court may use to confirm it in its final judgment.

I agree that in Section 190 the word "Court" means the Judge, but I am unable with respect to agree that the assessors are merely aiders and helpers of the Court on matters of fact whose opinions the Court may use to confirm it in its final judgment. In my opinion, assessors are normally the sole judges of fact, and the trial Judge in a trial with the aid of assessors only becomes a judge of fact either if the assessors disagree or if, when the assessors agree, he is unable to agree with both assessors. This is borne out by the provisions of Section 198 and to my mind the phrase "unable to agree with them" in sub-section (ii) of that section implies much more than that the Judge might himself have reached a different conclusion. It seems to me to suggest such a strong measure of disagreement that the Judge considers the opinions of the assessors unreasonable having regard to the evidence.

If I am right in thinking that the assessors are the judges of fact, then, although the wording of Sections 180 and 190 is exactly the same, and although the actual words no doubt have the same meaning in both sections, in my view, the practical effect of the two sections in their context is different. In each case the Court has to acquit "if it finds" that no case against the accused has been made out which if unrebutted would warrant a conviction. When a Judge is sitting alone, it is easy for him to reach this finding, because he is the sole judge of law and of fact, and he is the person who has to be satisfied beyond a reasonable doubt of the accused's guilt and must know at that stage whether or not he has believed the witnesses; but where the Judge is sitting with the assessors, he is unable to know at the close of the case for the prosecution what view the assessors will take of the evidence which has up to that point been produced. The Judge himself may not be altogether satisfied beyond all doubt, but the assessors may; unless, therefore, it is clear to the Judge at the close of the case for the prosecution that the assessors could not reasonably find the accused guilty on the evidence adduced if full weight were given to it, then it seems to me that the accused must be called upon for his defence.

I derive no assistance from the wording of Section 214 which deals with the position when the trial is by jury. There, at the close of the case for the prosecution, the Court directs a verdict of not guilty if there is *no* evidence that the accused committed the offence. This is strong language, and I do not think that a Judge trying a case with the aid of assessors needs to go so far under Section 190 as to decide that there is no evidence that the accused committed the offence. I read Section 190, in its context as part of Chapter XXI of the Criminal Procedure Code, as meaning that if, at the close of the case for the prosecution, the Judge finds that there is insufficient evidence then before the Court upon which reasonable assessors could find the accused guilty if no more is heard, then he must acquit the accused, but not otherwise. Except in exceptional circumstances, such as a principal witness being obviously unreliable, I do not think that a Judge, trying a case with the aid of assessors, can properly, on a submission of "no case", go into such questions as the weight of the evidence or the credibility of witnesses, which are matters to be dealt with by the Assessors at the conclusion of the whole case.

I would add that in this case there was ample evidence in my opinion to convict the accused at the close of the case for the prosecution, provided that the witnesses who deposed to the dying declaration were believed and that there was reasonable ground for assuming that the deceased spoke the truth when he made that declaration. I was of opinion — although I felt it improper to express any opinion at that stage — that both these conditions were fulfilled and there was corroboration of the deceased's statement. I therefore called upon the accused for his defence, and at the conclusion of the case both assessors found accused guilty of murder, a conclusion with which I did not disagree.

Accused Convicted.

LIANG HUAY HOO AND ANOTHER v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Bostock Hill, J.) October 11, 1947]

Penal Code s. 411 — Possession of property reasonably suspected of being stolen — Johore Stolen Property and Habitual Criminals Enactment (Enactment No. 34) — Alteration of Charges.

In this case, on charges under s. 411 of the Penal Code the first accused was convicted under s. 2 (i) of the Johore Stolen Property and Habitual Criminals Enactment (Enactment No. 34) and the second accused was convicted under s. 411 of the Penal Code. On appeal the conviction of the second accused was altered to a conviction under s. 2 (i) of the Johore Stolen Property and Habitual Criminals Enactment, the facts not justifying the original conviction.

Cases referred to:—

(1) *Munusamy v. Public Prosecutor* (1936) M.L.J. 93; (1936) F.M.S.L.R. 194.

(2) *Queen—Empress v. Dhanjibhai Edulji,* I.L.R. 20 Bom. 348.

CRIMINAL APPEAL FROM DISTRICT JUDGE.

A. J. Braga for the Appellants.

W. M. McCall (Crown Counsel) for the Respondent.

Bostock Hill, J. : — In this case Appellant No. 1 was convicted under Section 2 (i) of Enactment 34 for being in possession of a very large number of cigarettes which might reasonably be suspected to be stolen and was sentenced to 3 months R.I. Appellant No. 2 was convicted under Section 411 of the Penal Code, also in respect of a large number of cigarettes, and was sentenced to 6 months R.I.

This case had had a rather unfortunate career in that the charges had been altered a number of times and even in the actual trial the charge against No. 2 was amended at the end of the case for the Prosecution from a charge under Section 2 (i) of Enactment 34 to a charge under section 411 of the Penal Code.

Mr. Braga, for the Appellants, pointed out that at an earlier stage of the proceedings a charge under section 411 had been withdrawn against No. 2 accused and argued that the charge should not have been again altered at the actual hearing to a charge under that section.

I think it was unfortunate that there should have been so many alterations of the charges, but I came to the conclusion that there was no actual embarrassment caused to the accused at the trial.

The facts in short were that 111 cases of cigarettes, comprising about 4,000,000 cigarettes were despatched on 23-12-46 by Malayan Tobacco Distributors, Ltd., Singapore, to Chop Hiap Hock Seng, Benut. The cases were marked "H. H. S. Benut" and were loaded on lorries S. 8142 and J. 1201. The cigarettes were of Rough Rider, Ardath and Capstan brands.

P. W. 4, the driver of lorry S. 8142, gave evidence that at the 20th mile, Jalan Pontian, at about 2 p.m. on 23-12-46, the two lorries were stopped by five armed persons and that the occupants of the lorries were taken into the undergrowth and tied up and the lorries and cigarettes stolen. Two lorry drivers (P. W. 6 and P. W. 7) then gave evidence of being hired (with two other lorries) to go to Pulai. According to P. W. 7, they were hired at 1 p.m. on 23-12-46, i.e. before the cigarettes were actually stolen. On arrival at Pulai, the four lorries were loaded with cigarettes from two other lorries. One of the four lorries, that driven by P. W. 6, came back towards Johore Bahru and, about 3 miles out of the town, at Jalan Larkin, turned into an estate road, went along it for about 200 yards and unloaded the cigarettes.

Two witnesses, P. W. 8 and P. W. 9, both living in Jalan Larkin, then gave evidence of sacks of of cigarettes being brought to their houses at Jalan Larkin. P. W. 8 stated that No. 2 brought the sacks of cigarettes about 11 a.m. or noon about 24-12-46 and said that he wished to place the cigarettes under P. W. 8's care. No. 2 was a friend of P. W. 8. P. W. 9 stated at about 4 p.m. on 23-12-46, No. 2 came and brought sacks of cigarettes to his house for safe custody. He had known No. 2 for 10 years and No. 2 asked his assistance to carry the cigarettes to his house from a rubber estate about 200 yards distant from his house.

On 26-12-46 the Police visited P. W. 8's house and found there sacks containing 44,000 Ardath and 15,000 Rough Rider cigarettes. They were in between two wooden partitions at the back of the house. On the same day the Police visited P. W. 9's house and in one of the rooms found over 500,000 Rough Rider, Capstan and Ardath cigarettes, in gunny bags. The Police also gave evidence that about ¾ mile from P. W. 9's house 29 empty packing cases were found near a rubber estate. Each case bore the mark "H. H. S. Benut" and a serial number. P. W. 8's house was about 400 yards from where the packing cases were found.

On 1-1-47 the Police visited a house 6, Jalan Greja, Johore Bahru, the house of No. 1. In the ceiling of that house, which was reached through a manhole, 250,000 Rough Rider, Ardath and Capstan cigarettes were found. No. 1 lived at that house and carried on the business of a sauce manufacturer.

Both accused then gave evidence.

No. 1 stated that on 19-12-46 No. 2 approached him and said that there were some cigarettes for sale at retail control price and that $10,000 or $20,000 was required for their purchase. No. 1 stated that he entered into the transaction because he had seen in the papers that the duty on cigarettes was going to be increased and that if he bought at the then price he would be able to make a profit. No. 2 arranged for him to meet a man named Ho Chee Meng who said he was a cigarette agent. He stated that he had no reason to suppose that cigarettes had been fraudulently obtained. Finally he agreed to buy from the said Ho Chee Meng about 900,000 cigarettes for $15,000/-.

Ho Chee Meng brought them to his house in a lorry about 4.30 or 5 p.m. on 23-12-46. No. 1 paid Ho Chee Meng (whom he did not know) $3,500 in cash and also 2 cheques and 2 Bankers Drafts. He could not store all the cigarettes and No. 2 took away what he could not store in a lorry.

At the transaction, besides Ho Chee Meng and the two accused, a broker named Lau Chiang Teo was present. No. 1 stated that Ho Chee Meng gave him a receipt but that he lost it while detained at the Police Station. He also had lost a small book containing other details concerning this transaction. He stated that he told the Police the above story in their investigation and that he and the Police stopped the cheques, but that both drafts had been cashed. No. 1's explanation of keeping the cigarettes in the roof was that they might have got wet on the ground floor and also that his labourers occupy the ground floor and sleep there.

The broker Lau Chiang Teo gave evidence of introducing No. 2 to a man whose name he did not know but had been brought to him by one Teo Chik Phang who *was* known to him.

Dealing with the case against No. 1, Mr. Braga referred me to *Munusamy*[1] and *Queen — Empress v. Dhanjibhai*[2] but these cases only decide that it is for the Court to be satisfied that the circumstances were such that the police officer had grounds for suspicion that the property in the accused's possession was stolen property and that such suspicion was reasonable.

I am of opinion that in the present case the Police had in all the circumstances ample grounds for suspicion.

The only remaining question is as to whether he failed to account satisfactorily how he came by the cigarettes.

The learned District Judge found that he did so fail and I see no reason to differ from him. Mr. Braga submitted that the transaction does not on the face of it appear suspicious, but I am unable to agree with him. No. 1 was not a cigarette dealer and the transaction was a big one if undertaken, as No. 1 said, only because he had seen an announcement in a newspaper. Ho Chee Meng's statement that he lived somewhere near Benut and was a cigarette agent was accepted without confirmation and no enquiries were made about Tan Peck Sai, in whose favour the cheques and bank drafts were made. Also the cigarettes were stored in the roof of No. 1's house — a somewhat unusual spot. No. 1's appeal is, therefore, dismissed and the conviction and sentence upheld.

As against No. 2 the learned District Judge found that No. 2 knew and had reason to believe that the cigarettes were stolen property.

No. 2 gave evidence that the broker Lau Chiang Teo stopped him one day and asked him if he wanted to buy cigarettes — over $10,000 worth. That alone was an unusual proposition, but No. 2 seems to have entered almost eagerly into the transaction though he did not know the sellers. Only later did he come to know that the seller was Ho Chee Meng who said he was a dealer from up-country. No. 2 does not seem to have made any further enquiries about the seller, though Teo Chik Phang who introduced the seller or his agent to the broker Lau Chiang Teo was known to the latter. No. 2 then stated that he left the matter of the bargaining to No. 1 and just deposited his share of the transaction with him. No. 2 stated further that No. 1 told him to find space for storing some of the cigarettes and he said that he went to the houses of P. W. 8 and P. W. 9 and left them there. From the evidence of P. W. 8, No. 2 took cigarettes to his house on the morning of 24-12-46, but P. W. 9 said he took cigarettes to him on the evening of 23-12-46.

The learned District Judge stated that he was satisfied that the cigarettes found in the houses of P. W. 8 and P. W. 9 were part of the stolen cigarettes and that No. 2 knew or had reason to believe that they were stolen property.

Although there was in the case of No. 2 the added suspicion arising from the packing cases that had contained the stolen cigarettes being found within less than one mile from where P. W. 8 and P. W. 9 lived, I am of opinion that a case under section 411 of the Penal Code has not been made out against No. 2 and that his case in essentials does not differ from that of No. 1.

Accordingly I set aside the conviction and sentence under section 411 against No. 2 and convict him under section 2 (i) of Enactment 34 and sentence him to 3 months R.I. under that section.

Order Accordingly.

WONG MOOK v. WONG YIN AND 3 OTHERS.

[App. Civil Juris. (Willan, C.J.) October 15, 1947]

Labour Code S. 53 — Labourer absenting himself from work for the purpose of a strike — Whether this constitutes a breach of his agreement — Trade Unions Enactment, 1940, Ss. 20 and 54.

In this case the four respondents were employed by the appellant as tappers on a rubber estate. On the 11th day of July 1947 the respondents, along with other tappers, went on strike for a period of three days in